IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND/ODESSA DIVISION

CENTURY SURETY COMPANY,
Plaintiff,

v.

RTI SERVICES, LLC, AURELIA SILVA, and RILEY J. EDMUNDSON,
Defendants.

MO:24-CV-00074-DC

ORDER

Before the Court is the Report and Recommendation (R&R) of the U.S. Magistrate Judge[1] of United States Magistrate Judge Ronald C. Griffin concerning Defendant RTI Services, LLC and Defendant Aurelia Silva's 12(b)(1) and 12(b)(6) Motion to Dismiss.[2] In his R&R, Magistrate Judge Griffin recommends that the Court grant the Motion.[3] Century timely filed objections to the report and recommendation.[4]

A party may serve and file specific, written objections to a magistrate judge's findings and recommendations within fourteen days after being served with a copy of the report and recommendation and, in doing so, secure *de novo* review by the district court. 28 U.S.C. § 636(b)(1)(C). Because Century timely objected to the report and recommendation, the Court reviews the report and recommendation *de novo*. Having done so, the Court overrules Century's objections and adopts in part the report and recommendation.

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[1] Doc. 19.
[2] Doc. 10
[3] Doc. 19 at 1.
[4] Doc. 20.

BACKGROUND

This case stems from an underlying state court action[5] where Riley Edmunson seeks damages for past medical expenses exceeding $2 million. These injuries were sustained in an automobile accident with Aurelia Silva, an employee of RTI. At the time of the accident, RTI carried a primary commercial auto insurance policy with Redpoint, with a $1 million policy limit per occurrence. RTI also held a commercial excess liability policy with Century, offering additional coverage of $5,000,000 per occurrence.

The Century policy imposed specific notice requirements on RTI. It was obligated to notify Century "immediately of an 'event', regardless of the amount, which may result in a claim."[6] Additionally, if RTI notified "any 'controlling underlying insurer' of an 'event' involving 'bodily injury'," it was a "precondition of coverage" that RTI "notify [Century] in writing within 14 days of notifying the 'controlling underlying insurer.' "[7] Failure to do so is "deemed to have prejudiced [Century] and voids all coverage of an 'event', claim or suit."[8]

The accident occurred on July 29, 2021, and RTI notified Redstone of the underlying occurrence, one involving "bodily injury," approximately one day later.[9] But RTI did not provide notice to Century until nearly a year later, on July 19, 2022. Century contends that RTI's failure to timely notify constitutes a material breach of the policy such that coverage for the incident is void. Century therefore seeks a declaration that it owes no obligation to

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[5] *Riley J. Edmundson v. RTI Services, LLC and Aurelia Silva*, Cause No. 22,954, in the 109th Judicial District Court of Andrews County, Texas.
[6] Complaint ¶ 24 (citing agreement § 3(a)).
[7] *Id.*
[8] *Id.*
[9] *Id.* ¶ 33.

pay any party on behalf of RTI and/or Silva for the accident, including Edmundson.[10] RTI argues that Century is owed no such declaration—at least not at this time in the proceedings.

DISCUSSION

Parties to insurance disputes routinely file declaratory judgment actions to resolve disagreements over the duties to defend and/or indemnify. Under the Declaratory Judgment Act, federal courts may declare the rights and obligations of parties before further relief can be sought.[11] But the duty to defend and the duty to indemnify are distinct obligations, and their differences impact whether a federal court has jurisdiction to resolve a dispute under the Act. For example, while the duty to defend is triggered by simply filing a lawsuit against the insured, the duty to indemnify is not triggered until the insured is held liable to a third party for loss. Thus, in some cases, a dispute over the duty to defend may be justiciable even when a dispute over the duty to indemnify, in the same case, is not.

In a diversity action, courts apply the substantive law of the forum state.[12] Because the policy was delivered in Texas, this Court applies Texas substantive law.[13]

Under Texas law, the duty to defend and the duty to indemnify are separate and distinct.[14] Under Texas law, the duty to indemnify is not justiciable in court prior to a

[10] *Id.* ¶ 37.
[11] 28 U.S. Code § 2201(a).
[12] *See Delta & Pine Land Co. v. Nationwide Agribusiness Ins. Co.,* 530 F.3d 395, 399 (5th Cir. 2008).
[13] *See Thermo Terratech v. GDC Enviro–Solutions, Inc.,* 265 F.3d 329, 334 (5th Cir. 2001).
[14] *Gilbane Bldg. Co. v. Admiral Ins. Co.,* 664 F.3d 589, 601 (5th Cir. 2011).

settlement or judgment.[15] This is because, in many cases, coverage turns on the facts proven in the underlying lawsuit.[16] Only one exception exists.

That exception, established in *Griffin*, allows a court to address the duty to indemnify before liability is determined in the underlying suit "when the insurer has no duty to defend *and the same reasons that negate the duty to defend likewise negate any possibility the insurer will ever have a duty to indemnify*."[17]

But unlike in *Griffin*, here, Century has no duty to defend because it is an excess insurer, and the primary insurer bears the defense obligation.[18] Century's argument that it has no duty to indemnify, however, rests on a different ground: RTI's alleged failure to provide timely notice under the policy. Because the reasons for Century's lack of a duty to defend and its claimed lack of a duty to indemnify are wholly distinct, *Griffin* does not apply. Thus, Century's duty to indemnify is not yet justiciable. *Enbridge* does not change this.

Finally, Century would do well to remember that when it addresses a report and recommendation of the Magistrate Judge, it is still addressing this Court. Further petulant lapses in decorum will be met with a show cause order or sanctions.

Therefore, the Court finds that the R&R properly concluded that this Court lacks jurisdiction to address Century's duty to indemnify at this stage of the litigation. Accordingly,

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[15] *See Central Surety & Ins. Corp. v. Anderson*, 445 S.W.2d 514 (Tex. 1969) (error for trial court to determine insurer had duty to indemnify insured for potential judgment); *Firemen's Ins. Co. of Newark N.J. v. Burch*, 442 S.W.2d 331 (Tex. 1968) (district court had no power to render advisory opinion on insurer's coverage for possible future judgment); *Weeks Marine, Inc. v. Standard Concrete Prods.*, Inc., 737 F.3d 365, 372 (5th Cir. 2013) (recognizing Texas rule considering justiciability of duty to indemnify prior to resolution of underlying action).
[16] *Farmers Tex. Cnty. Mut. Ins. v. Griffin,* 955 S.W.2d 81, 84 (Tex. 1997).
[17] *See id.* (emphasis in original).
[18] Response at 5.

the Court **ORDERS** that the report and recommendation of United States Magistrate Judge Ronald C. Griffin[19] is **ADOPTED IN PART**, solely as to its conclusion to dismiss the action for lack of jurisdiction. The Motion[20] is therefore **GRANTED** and the objections[21] **DENIED.**

It is so **ORDERED.**

SIGNED this 24th day of February, 2025.

DAVID COUNTS
UNITED STATES DISTRICT JUDGE

[19] Doc. 19.
[20] Doc. 10.
[21] Doc. 20.